

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. BOX 193939
San Francisco, CA. 94119-3939

TO: Counsel of Record in Civil Appeals and Petitions for Review

RE: Procedure Governing Circuit Mediation Program

A. Scope of the Program

These procedures apply to all civil cases in this court with the exception of: (a) appeals or petitions in which the appellant/petitioner is proceeding without the assistance of counsel or in which the appellant/petitioner is incarcerated; (b) appeals filed under 28 U.S.C. Section 2241, 2254 and 2255; (c) permissive appeals under 28 U.S.C. Section 1292(b); (d) petitions for writ under 28 U.S.C. Section 1651; and (e) petitions for review of Board of Immigration Appeals; and (f) petitions for review of and applications for enforcement of NLRB decisions under 29 U.S.C. Section 160(e). See Ninth Circuit Rule 33-1.

B. The Docketing Statement

As of July 1, 1992, the appellant/petitioner in each civil case shall complete and submit to the district court upon the filing of the notice of appeal, or to the Ninth Circuit upon the filing of a petition for review, an original and one copy of the Civil Appeals Docketing Statement. The Docketing Statement form is available in the Clerk's office of this court or any district court in the Circuit. Appellant/petitioner shall attach to the Docketing Statement: (a) a copy of the judgment or order appealed from; (b) a copy of any opinion or findings of fact and conclusions of law supporting the judgment or order; and (c) proof of service on opposing counsel. Failure to file a Docketing Statement as required is a ground for dismissal of the appeal in accordance with Ninth Circuit Rule 42-1, or other sanction.

Any other party may file with this court a single-page response to the Docketing Statement within 7 days of the date of its service. Any party may request a conference by filing a motion, preferably by stipulation. Requests for a settlement conference will be accommodated whenever possible.

C. The Prebriefing Conference

After reviewing the Docketing Statement, the court will determine whether to hold a prebriefing conference. If a case is selected for inclusion in the Circuit Mediation Program, counsel will receive notice of the date and time of the conference. Unless counsel already has a directly conflicting court date, a request to alter the date will be disfavored. Attendance at the conference is mandatory; failure to attend may result in the dismissal of the appeal or the imposition of other sanctions.

Initial conferences are generally held by telephone with counsel only; subsequent conferences may be held in person with attendance by counsel and parties. Conferences are conducted for the court by Mediation Attorneys all of whom are experienced settlement attorneys. The Mediation Attorneys have no role in advising the court on the merits of any case or substantive motion.

The primary purpose of the conference is to encourage settlement of the appeal. All counsel whose cases have been included in the program shall discuss settlement with their principals before the initial conference, and shall attend the conference with authority to make and respond to settlement proposals. The content of settlement discussions before this court shall remain confidential and shall not be disclosed by the Mediation Attorney or by counsel.

If settlement is not reached, the Mediation Attorney will address any jurisdictional issues and work with counsel to develop an efficient plan for the processing of this case. This may include limiting the issues, altering the length of briefs, defining the record on appeal, or staying the appeal pending some contingency such as disposition of a related case.

The court will also hold prebriefing conferences in complex matters requiring extensive case management. Such conferences may be held before a senior staff member of the Clerk's Office or by a Mediation Attorney. Case management conferences will be held only in matters involving: (a) numerous related appeals or petitions; (b) multiple parties or intervenors whose alignment is not obvious; or (c) unique circumstances not readily handled by the Clerk's Office. Routine case management in relatively simple cases may be accomplished by submitting stipulated motions to the Clerk's Office.

When a case is selected for a conference, the briefing schedule established by the Clerk's Office at the time the appeal is docketed remains in effect unless adjusted by a conference attorney, or by the Clerk's Office pursuant to Ninth Circuit Rule 31-2.3.

Conferences are not held in all appeals and petitions for review. If, 60 days after the Notice of Appeal is filed, counsel has not received notice that a conference has been scheduled, counsel should assume that no conference will be held.

D. More Information

If you have any questions concerning the Circuit Mediation Program, please contact the Office of Circuit Mediation at (415)556-9900. For general questions concerning the rules and procedures of the Ninth Circuit, please contact the Clerk's Office at (415) 556-9800.